IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3553 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALJI K CHOWDHARY

Versus

LIC OF INDIA

Appearance:

1. Special Civil Application No. 3553 of 2001
   MR SHIRISH JOSHI for Petitioner No. 1
   MR AK CLERK for Respondent No. 1-2
   SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision:22/07/2002

CAV. JUDGEMENT.

1 Heard Mr.Shirish Joshi, learned Advocate for the petitioner.

2 Rule.

Mr.A.K.Clerk, learned Advocate appears and waives service of Rule on behalf of the respondents.

3 The petitioner challenges by way of this petition the order dated 28/6/1994 passed by the respondent No.2, the order dated 15.7.1999 passed by the Zonal Manager and the order dated 30/6/2000 passed by the Chairman. The facts briefly are : That respondent was working as an Agent for Life Insurance Corporation of India. On 27/8/1993 the petitioner was served with a notice stating that serious irregularities in respect of life insurance business canvassed by the petitioner had been noticed and the competent authority of the corporation had decided to initiate necessary actions invoking Regulations 16(1)(a) & (b) of the (Agents) Regulations, 1972 (Regulation). The petitioner was therefore directed not to solicit or procure new life insurance business till further instructions. Thereafter, on 11.11.1993, the petitioner was served with a chargesheet-cum-show cause notice. The petitioner filed his reply in part on 20/12/1993 and submitted the remaining part of the reply on 19/1/1994. It appears that not only the petitioner was restrained from procuring new business but he was not also paid renewal commission for the life insurance policies which were issued under his agency at an earlier point of time. Hence, on 13/4/1994 the petitioner addressed a communication seeking sympathetic consideration in the backdrop of his personal circumstances.

4 The respondent no.2 viz. Senior Divisional Manager, who was designated as disciplinary authority passed the impugned order dated 28/6/1994 terminating the agency of the petitioner with forfeiture of renewal commission with immediate effect. In para 4 of the said order respondent no.2 has specifically stated that as requested by the petitioner an opportunity to present his case personally had been accorded on 17/5/1994 and in presence of respondent no. 2 and four other senior officers the petitioner had very specifically and categorically admitted all the charges. This order came to be confirmed in appeal by the Zonal Manager on 15/7/1999. The petitioner being aggrieved by the said appellate order moved the Chairman by filing Memorial before him but same came to be rejected on 6/9/1999.

5 Mr.Shirish Joshi, learned Advocate submitted on behalf of the petitioner that the respondents had failed to act in accordance with principles of natural justice;

that reasonable opportunity to show cause was necessary and this envisages that the respondents do not rely upon evidences which were gathered behind the back of the petitioner. That the respondents had made some so called inquiries with the school authorities and relying upon the same they had predetermined the issue against the petitioner. That the entire conduct was merely with a view to show on record that the petitioner had been given the necessary opportunity. In support of this submission reliance was placed on decision of S.Prasanna vs. L.I.C.,A.I.R.1993(Madras) 150.

6. Mr.Joshi also invited the attention to Regulation 19 of the Regulations to contend that the renewal commission can be withheld only in case of fraud. That the case of the petitioner was that the age proof submitted by him in relation to various life insurance policies canvassed by him were based on documents submitted by the individual proposers. That at no point of time had the petitioner committed any act which would amount to fraud and the respondent authorities had failed to establish fraud. That the case of the respondent authorities was based on some so called inquiries made with different school authorities resulting in an inference that the age proofs submitted did not tally with what was stated by the school authorities and hence amounted to fraud. Thus, according to Mr.Joshi the entire action was malafide and deserved to be quashed. In the alternative, the petitioner could not be deprived of the renewal commission even if the termination of agency was held to be correct.

7. As against this Mr.A.K.Clerk appearing on behalf of respondents submitted that there was no violation of principles of natural justice as can be seen from the number of opportunities that the petitioner was accorded. Not only this, the petitioner was also heard personally as requested by the petitioner and during the course of such personal hearing the petitioner having admitted his fraudulent conduct it was not open to the Court to take any other view of the matter. Mr.Clerk also submitted that all the three authorities had arrived at a concurrent finding of fact and in a petition under Articles 226 and 227 of the Constitution of India, this Court should not interfere with the said findings. In support of his case Mr.Clerk relied upon the following unreported decisions :

[1] SCA No.7567 of 1997
(Coram :Mr.Justice A.L.Dave)

dated : 15/04/1999. In the case of
Shankarlal H.Patel vs. LIC of India &
others, and

[2] SCA No.541 of 2001.
(Coram : Mr.Justice Ravi R.Tripathi)
dated : 21/09/2001. In the case of
Amratbhai N.Patel vs. L.I.C.
of this Court;

[3] Civil Misc.Writ Petition No.12796 of 1985.
Dated :10.12.1996. In the case of
Wasti Ram Bhasin vs. L.I.C.
before the High Court of Allahabad.

[4] O.J.C.No.7525 of 2002 (Orissa).
dated : 06.03.1995. In the case of
Durga Prasad Maharashtra Vs. L.I.C. of India
before the High Court of Orissa.

8 Regulation No.16 of the Regulations which provide

for termination of agency reads as under :

"16. Termination of agency for certain lapses:

(1) The competent authority may, by order, determine
the appointment of an agent.

(a) if he has failed to discharge his functions, as
set out in regulations 8, to the satisfaction of
the competent authority,

(b) if he acts in a manner prejudicial to the
interests of the Corporation or to the interests
of its policyholders.

(c) if evidence comes to its knowledge to show that
he has been allowing or offering to allow rebate
of the whole or any part of the commission
payable to him;

(d) if it is found that any averment contained in his

agency application or in any report furnished by him as an agent in respect of any proposal is not true :

(e) if he becomes physically or mentally incapacitated for carrying out his functions as an agent;

(f) if he being an absorbed agent, on being called upon to do so, fails to undergo the specified training or to pass the specified tests, within three years from the date on which he is so called upon;

Provided that the agent shall be given a reasonable opportunity to show cause against such termination.

(2) Every order of termination made under sub-regulation (1) shall be in writing and communicated to the agent concerned.

(3) Where the competent authority proposes to take action under Sub-regulation (1) it may direct the agent not to solicit or procedure new life insurance business until he is permitted by the competent authority to do so".
(emphasis supplied).

The said Regulation stipulates various conditions and one of the conditions as per clause (d) is that in case a report furnished by an agent in respect of any proposal is not proved the agency can be terminated provided the agent is given a reasonable opportunity to show cause against such termination. Clauses (a) and (b) stipulated situations where the agent fails to discharge his functions as set out in Regulation 8 or acts in a manner prejudicial to the interest of the corporation or to the interest of the policy holders. As the facts on record go to show the charge against the petitioner is that he canvassed certain life insurance policies which were accompanied by age proof documents which did not reflect the correct date of birth and hence he was held to have failed in discharging his functions as set out in Regulation 8, wherein one of the functions of an agent is to take all reasonable steps to ensure that the age of the life assured is admitted at the commencement of the policy. Once the competent authority arrives at this satisfaction that an agent has failed to make all reasonable inquiries or take all reasonable steps it

would be an act which would be prejudicial to the interest of the Corporation. In other words the petitioner was found to have submitted reports in respect of proposals which were not true. Thus, according to respondent authorities the petitioner had committed a fraud on the Corporation resulting in the petitioner being visited with an order of termination of agency as well as stoppage of renewal commission.

9. Regulation 19 states that in the event of termination of the appointment of an agent, except for fraud, the commission on the premiums received in respect of the business secured by him shall be paid to him and thereafter various situations are mentioned whereby proportionate commission is to be computed. The most material part of this Regulation is that an agent is entitled to renewal commission even on discontinuance of his agency except in cases where termination is due to fraud committed by such an agent. All the three authorities have concurrently come to a finding that the petitioner had acted willfully in submitting various proposals by mentioning in the proposal forms on different dates of birth than the dates of birth found in the school records. Respondent No.2 who was the designated competent authority has recorded in his order that the petitioner was heard personally by him as well as four other senior officers (whose names have been mentioned in the affidavit-in-reply) and during course of such personal hearing the petitioner had admitted very specifically and categorically that the age proofs were prepared by him and are false and fabricated, that such age proofs had been prepared by him with a view to avoid further medical examinations of the proposers and to sell the business on higher side with a view to earn more commission and to become crorepati. Further admission of the petitioner is also recorded to the effect that in some of the policies the proposer was uninsurable or was not entitled to plan of the term proposed but the petitioner had forwarded the proposal by understating the age. Mr.Joshi had very vehemently contended that this so called admission had been denied by the petitioner in the appeal memo but the authorities have not accepted the version of the petitioner and at the same time have chosen to go by what is recorded by respondent no.2 in his order dated 28.6.1994.

10. It is amply clear that the petitioner is seeking intervention of this Court for the protection of his contractual rights. Keeping in mind the rival contentions and considering that disputed questions of

facts are involved it would not be proper for this Court to exercise extra ordinary jurisdiction in light of the concurrent findings of fact recorded by three authorities. It is well settled that while exercising the extraordinary jurisdiction it is not open to this Court to enter into reappreciation of evidence and arrive at a different conclusion even if on the same set of facts and circumstances the Court is in a position to arrive at such a finding. Further more, although the petitioner has alleged malafide exercise of power by the authorities, there is nothing on record to sustain this contention. In the show cause notice dated 11/11/1993 the petitioner was put to notice regarding the inquiries carried out by the Corporation and details of each of the proposals and why the authorities found the same to be not true was also put to the petitioner so as to enable him to furnish his explanation. In fact, the petitioner has submitted two detailed replies on 20/12/1993 and 19/1/1994. Thus, the question of violation of principles of natural justice also does not survive.

20. Hence, for the aforestated reasons this Court is not inclined to interfere with the impugned orders. The petition is dismissed. Rule discharged. There shall be no order as to costs.

Sd/-

(D.A.Mehta, J)

m.m.bhatt